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12 JAN 2006

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In re Application of
BIKHOVSKY et al.
Application No.: 10/518,022
PCT No.: PCT/IL03/00520
Int. Filing Date: 18 June 2003
Priority Date: 18 June 2002
Attorney Docket No.: BIKHOVSKY2
For: ELECTRICAL HEATING DEVICE,
PARTICULARLY FOR HEATING
PATIENT BODY

DECISION ON
PAPERS UNDER 37 CFR 1.42

This decision is in response to the declaration filed 26 August 2005, which is being treated as a request under 37 CFR 1.42. No petition fee is required.

BACKGROUND

On 18 June 2003, applicants filed international application PCT/IL03/00520, which claimed a priority date of 18 June 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 24 December 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 18 December 2004.

On 15 December 2004, applicants filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee; a copy of the international application; and a preliminary amendment.

On 30 June 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring an oath or declaration in compliance with 37 CFR 1.497 and the surcharge fee required under 37 CFR 1.492(e). The notification set a two-month time limit in which to respond.

On 26 August 2005, applicants filed a declaration executed by: Dirth Bar-Adon as an inventor and Sergey Bihovsky on behalf of the deceased inventor, David Bikhovsky.

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

The declaration filed 26 August 2005 is executed by Sergey Bihovsky on behalf of the deceased inventor, David Bikhovsky. The declaration submitted appears to have been executed by the proper party under 37 CFR 1.42, however, the declaration does not satisfy the requirements under 37 CFR 1.497(b)(2).

37 CFR 1.497(b)(2) states the following:

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to revised 37 CFR 1.497(b)(2), in addition to the citizenship and former residence and post office address of the deceased inventor referenced under 37 CFR 1.497(b)(2), the declaration must also provide residence, citizenship, and post office address for the executor. The declaration filed on 26 August 2005 does not include the residence and post office address for the executor. Accordingly, the declaration is not in compliance with 37 CFR 1.497(b)(2).

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

Applicants are required to provide an oath/declaration in compliance with 37 CFR 1.497(a)-(b) within **TWO (2) MONTH** from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450,

Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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